

405 KAR 3:030. Small operator exemption.

RELATES TO: KRS 350.151

STATUTORY AUTHORITY: KRS 350.151, 224.071

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.151 requires the Environmental and Public Protection Cabinet to adopt rules and administrative regulations for the surface effects of underground coal mining. This administrative regulation sets forth conditions for the exemption of qualified small operators from certain provisions of this chapter.

Section 1. Applicability. If a person or operator is eligible under Section 2 of this administrative regulation, and intends to engage in surface operations of underground coal mining on or after May 3, 1978, the cabinet may certify the person or operator as qualified to receive a limited exemption from the provisions of this chapter. The exemption:

(1) Shall not relieve the person or operator of his obligations under the terms of any permits issued by the cabinet under which he is operating or other obligations imposed upon him by applicable laws and administrative regulations;

(2) Shall not relieve the person or operator of the obligation to apply for a permit by August 3, 1978 as required by 405 KAR 3:020, Section 5(1)(a);

(3) Shall not relieve the person or operator of his obligations imposed by 405 KAR 3:020, Section 5(1)(b), (c), (d), and (f), regarding operations which endanger the health and safety of the public or the environment;

(4) Shall not include the provisions of 405 KAR 3:100, Section 7, regarding the placement of spoil or other material on downslopes in steep slope areas; and

(5) Shall exempt the permittee from the requirement of administrative regulations 405 KAR 3:070 through 405 KAR 3:190 of this chapter except as provided in subsection (4) of this section.

Section 2. Eligibility. A person or operator is eligible for an exemption under this administrative regulation if:

(1) The actual and attributed production of that person or operator is estimated by the cabinet and the Director of the Office of Surface Mining of the U.S. Department of Interior not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that person or operator:

(a) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that person or operator was 100,000 tons of coal or less from strip and underground coal mining operations; or

(b) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all strip and underground coal mining operations of that person or operator in the average calendar month was an amount of coal which when multiplied by twelve (12) yields a product of 100,000 tons or less;

(c) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

Section 3. Applications. Applications for an exemption under this section shall be submitted to the Director of the Office of Surface Mining of the U. S. Department of Interior and to the Commissioner, Department for Natural Resources, Frankfort, Kentucky 40601, by March 1, 1978, or such other date as established by the Office of Surface Mining.

Section 4. Request. The request for exemption shall be in the form of an affidavit and shall include:

(1) The name and address of the person or operator and of persons who control him by reason of stock ownership or otherwise.

(2) The name, location, Mine Safety and Health Administration identification numbers, and Kentucky Department of Mines and Minerals license numbers of the underground coal mining operations for which exemption is sought, including a statement of the dates each license was issued or renewed and will expire.

(3) The date and method of creation and business organization arrangement if the person or operator is not an individual.

(4) A listing of all strip and underground coal mining operations showing:

(a) Actual production for the year ending July 31, 1977, attributed to the person or operator and the inclusive dates of operation.

(b) Estimated production for the year ending December 31, 1978, attributed to the person or operator and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the person or operator has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two (2) weeks stating:

(a) That an application for a small operator exemption will be filed, which if granted would exempt the person or operator from certain environmental protection performance standards in PL 95-87 and KRS Chapter 350;

(b) The name and address of the person or operator;

(c) The location of the surface operations of underground coal mining to which the exemption will apply; and

(d) That public comments may be submitted to the Commissioner, Department for Natural Resources.

(7) Production from the following operations shall be attributed to the person or operator:

(a) All coal produced by operations beneficially owned entirely by the person or operator, or controlled by reasons of ownership, direction of the management, or in any other manner by the person or operator;

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the person or operator owns more than a five (5) percent interest;

(c) All coal produced by persons who own more than five (5) percent of the person or operator or who directly or indirectly control the person or operator by reason of stock ownership, direction of the management or in any other manner.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the person or operator.

Section 5. (1) The cabinet shall certify the applicant as qualified for the exemption if, based upon comments from the Department for Natural Resources or the public, or any other information, it finds that:

(a) The person or operator has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(b) The exemption will not be inconsistent with state or federal law, regulation or permit terms.

(2) Any person aggrieved by the decision of the cabinet under this section may appeal within thirty (30) days from receipt of that decision to Franklin Circuit Court pursuant to KRS 350.032(2).

(3) The exemption shall be effective on the date approved. It shall remain in effect until December 31, 1978, or until revoked, whichever is earlier.

(4) The cabinet shall revoke the qualification for the exemption upon finding that the qualification

was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year. (4 Ky.R. 406; eff. 5-3-78; Am. 507; 5 Ky.R. 218; eff. 8-23-78; TAm eff. 8-9-2007.)